

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

MALIK WHITTAKER,

Plaintiff,

ANSWER OF DEFENDANT
THE CITY OF NEW YORK

-against-

08 CV 03209 (SHS)

THE CITY OF NEW YORK, et. al.,

Jury Trial Demanded

Defendants.

----- X

Defendant The City of New York, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to plaintiff's complaint, respectfully alleges, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph 1 of the complaint, except admit that plaintiff purports to proceed in this action.

2. Deny the allegations set forth in paragraph 2 of the complaint, except admit that plaintiff purports to proceed in this action and invoke the jurisdiction of the Court as stated therein.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the complaint.

4. Admit that defendant City of New York is a municipality.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the complaint.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the complaint.

8. Deny the allegations set forth in paragraph 8 of the complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the complaint.

10. Deny the allegations set forth in paragraph 10 of the complaint.

11. Deny the allegations set forth in paragraph 11 of the complaint.

12. Deny the allegations set forth in paragraph 12 of the complaint, except admit that plaintiff purports to proceed in this action.

13. Deny the allegations set forth in paragraph 13 of the complaint, except admit that plaintiff purports to proceed in this action and invoke the jurisdiction of the Court as stated therein.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the complaint.

15. Admit that defendant City of New York is a municipality.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of the complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of the complaint.

18. Deny the allegations set forth in paragraph 18 of the complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the complaint.

20. Deny the allegations set forth in paragraph 20 of the complaint.

21. Deny the allegations set forth in paragraph 21 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

22. The complaint fails, in whole or in part, to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

23. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision, nor have defendants violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

24. There was probable cause for plaintiff's arrest and detention.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

25. Plaintiff's claims are barred, in whole or in part, by his failure to comply with the conditions precedent to suit.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

26. Any injury alleged to be sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

27. At all times relevant to the acts alleged in the complaint, the duties and functions of defendant City's officials entailed the reasonable exercise of proper and lawful discretion and defendant City is, therefore, entitled to governmental immunity from liability.

WHEREFORE, defendant City of New York respectfully requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
 June 20, 2008

MICHAEL CARDODOZ
Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007

By: _____ /s/
MARK ZUCKERMAN
Senior Counsel (212) 442-8248